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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1986

ROBERT R. COOK,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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QUESTIONS PRESENTED

I.

Whether this Court should grant certiorari to review the refusal of the Supreme Court of Georgia to allow Petitioner oral argument before it denied Petitioner his Fifth and Fourteenth Amendment Rights?

II.

Whether this Court should grant certiorari to review the erroneous conclusion of the lower court that the evidence was sufficient to convict the Petitioner which misconstrues and is in conflict with this Court's prior rulings and results in a denial of Petitioner's Fifth and Fourteenth Amendment rights?

PARTIES INVOLVED

All Parties to the Proceedings are included in the style of the case.

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No. .....

In The

Supreme Court of the United States

October Term, 1986

ROBERT R. COOK,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Petitioner, ROBERT R. COOK, prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of Georgia entered on March 3, 1987, and its denial of a timely Motion for Rehearing and Motion for Oral Argument on March 24, 1987.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia has not yet been reported; a true and correct copy of the opinion is set out at App. 1 hereto. Attached is a true and correct copy of the denial of Petitioner's Motion for Rehearing. See App. 9. Also, attached is a true and correct copy of the order denying petitioner oral argument dated March 24, 1987, and the order granting a stay of the Supreme Court of Georgia Remittitur. See App. 10 and App. 11.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Georgia was entered on March 3, 1987. A timely petition for rehearing was denied on March 24, 1987. See App. 9. Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3), petitioner asserting deprivation of his rights secured by the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS INVOLVED

This case involves the Fifth Amendment to the United States Constitution which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

the Fourteenth Amendment to the United States Constitution, which provides in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also concerns provisions of the Georgia statutes and constitution, specifically, O.C.G.A. 5-6-33, Article 1, Section 1, Paragraph 1; Article 1, Section 1, Paragraph 2; and Article 1, Section 1, Paragraph 12, of the 1983 Georgia Constitution and the text of these provisions. See App. 44, App. 37, App. 40 and App. 42.

STATEMENT OF THE CASE

This is a petition for Writ of Certiorari to review the four to three judgment of the Supreme Court of Georgia, entered on March 3, 1987, which affirmed the conviction of the petitioner, Robert R. Cook. Petitioner made a motion for directed verdict at the end of the State's case (Vol. 4, p. 59) and at the close of evidence (Vol. 4, pp. 157-158), and argued the constitutional error of the sufficiency of evidence in his motion for new trial and brief to the Supreme Court. Petitioner took exception to the charge of the court (Vol. 5, p. 90). All constitutional error were raised at the motion for new trial (MNT p. 18). He argued the constitutional error of the denial of oral argument and the erroneous charge given the jury in his motion for rehearing before that court.

Petitioner was convicted of three counts of theft by conversion and sever counts of malpractice in office said acts alleged to have taken place while he was the duly elected Probate Court Judge of Chatham County, Georgia. His total sentences amount to six years imprisonment followed by five years on probation and over $7,000 in fines. In the statement of facts which follows, the circumstances

relevant to this petition are broadly described. More specific factual references are set forth in connection with the arguments related to the questions presented.

The petitioner's original trial was held on June 24, 25, 26, and 27, 1985, and the jury found the petitioner guilty on June 27, 1985, of seven counts of malpractice in office and three counts of theft by conversion. The petitioner filed a motion for new trial on June 9, 1985, at which time the issues raised in this petition, except the subsequent denial of oral argument, were raised and ruled upon by the trial court, with the said motion being denied on October 14, 1985. The conviction and sentence was upheld by the Supreme Court of Georgia on March 3, 1987, in a four to three opinion. A motion for rehearing and oral argument was denied by the Supreme Court of Georgia on March 24, 1987. Petitioner was never afforded requested oral argument prior to the Supreme Court of Georgia issuing a decision. Petitioner's request for oral argument in his motion for rehearing was denied with two justices dissenting.

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STATEMENT OF FACTS

Several employees of the Probate Court testified that money collected for marriage licenses and pistol permits was kept in a cash box in their office. These employees testified that there were problems with the daily deposits being short because of IOU's being placed in the box by a number of employees, including the Judge, your Petitioner. Problems with the cash box escalated in that em-

ployees of the office and other offices in the courthouse frequently were placing checks and IOU's in the cash box and withdrawing cash for same. A resultant shortage of funds was discovered by an audit of the Court's funds. Shortages totalled approximately $6,300 in 1980, $9,800 in 1981, and $4,000 from January to September, 1982, in the marriage license account and $10,000 in 1980, $14,500 in 1981, and $6,000 for the period audited in 1982 in the pistol permit account. The Petitioner was acquitted of the theft of these funds.

Bonnie Penton, the petitioner's secretary, testified that Judge Cook had told her on occasions he had written checks for the purposes of obtaining cash from the cash box until he made a deposit. She testified the Judge fired her after the problem with the shortages surfaced and she told one of the investigators that it was her intention to "sink . . . the Judge's ship".

Petitioner testified that when he became the Probate Court Judge he relied upon his clerk and secretary to handle the administrative duties of the court. The Judge denied the allegations of his secretary, Bonnie Penton, that he had told her to hold his checks and not to deposit those checks that he had written over a period of time and stated that the first time he heard about the checks not being deposited was the night that Ms. Penton informed him there was a shortage in the pistol permit account. Petitioner testified that he was shocked to learn about the checks and that he immediately deposited an amount of money equal to the checks in the bank to cover those checks.

Ben Aronson, a witness for the State who was a certified public accountant, testified that Bonnie Penton had

told him that she believed there was a shortage of funds in the Probate Court. Further, that she had held the petitioner's personal checks and not deposited them and that petitioner was not aware that she had not deposited those checks when written.

As to the malpractice counts, evidence was presented to show that Petitioner was given a $1,000 advance for a trip to California and that Petitioner did not turn in a travel expense form as administratively required by Chatham County. Further, evidence was presented that petitioner failed to appoint a county administrator as required by law to handle two estates exceeding $2,500, with no allegation of loss.

The issues raised in this petition for certiorari are:

Does the Supreme Court of Georgia denying petitioner the opportunity to orally argue the merits of his case before that Honorable Court pursuant to Rule 49 of the Rules of the Supreme Court of Georgia, after having made a written request to the Clerk, deprive him of his right to Due Process and Equal Protection of law pursuant to the Fifth and Fourteenth Amendments to the United States Constitution,

Secondly, did the lower court err in holding the evidence presented at petitioner's trial was sufficient to convict him, as said four to three opinion misconstrued and conflicted with this court's prior decisions?

———o———

REASONS FOR GRANTING WRIT

The present case raises two issues as to which the Federal Constitution and decisions of this Court are controlling and which the Supreme Court of Georgia has failed to follow. Each of the issues presented rises in a context in which the question is solely one of constitutional interpretation. In each case, the record frames the issue in a manner which does not require this Court to sort out disputed facts or to approach the question from some tangent poorly developed in the record. Each of the questions were raised appropriately below and was addressed by the Supreme Court of Georgia and each of the questions arises against the background of prior decisional authority in such a fashion as to enable this Court to see the range of arguments relevant to an ultimate decision on the merits.

In short, quite apart from the urgency of granting the writ viewed from a prospective of a petitioner who is facing incarceration, there is an adequate basis here to invoke this Court's attention in its capacity as the ultimate expounder of federal constitutional principles and their implementation in an area so sensitive as the taking of an individual's personal liberty.

In the paragraphs which follow we describe the questions presented in only such detail as is necessary to substantiate the points made above. In an area such as this, each of the questions could be subject to an extensive essay in terms of importance, need of resolution and reasons for rejecting the path chosen by the court below. More extensive illumination of these matters, however, can await the point at which this court invites full briefing and argument.

A. THE REFUSAL OF THE SUPREME COURT OF GEORGIA TO AFFORD THE PETITIONER ORAL ARGUMENT AND AN OPPORTUNITY TO BE HEARD DENIES PETITIONER'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW PURSUANT TO THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND THIS COURT SHOULD GRANT THE WRIT AND REVERSE THE DECISION OF THE COURT BELOW, OR ALTERNATIVELY, REMAND THIS CASE FOR RECONSIDERATION.

Under the law in Georgia, a defendant is specifically afforded the right to appeal pursuant to O.C.G.A. 5-6-33. Further, a defendant is afforded the right to defend his cause in the Supreme Court of Georgia pursuant to Article I, Section I, Paragraph 12, of the 1983 Georgia Constitution. Article I, Section I, Paragraph 1 and 2 of the 1983 Georgia Constitution specifically affords an individual the right to due process and equal protection of the law, parallel to and in addition to his Fifth and Fourteenth Amendment rights under the Federal Constitution.

The Petitioner received the notice of docketing his case from the Supreme Court of Georgia on June 6, 1986. See App. 34. His case had been transferred from the Court of Appeals of Georgia. Petitioner wrote Joline B. Williams, Clerk of the Supreme Court of Georgia in a letter dated June 10, 1986, specifically requesting that he be afforded oral argument before the court and noted in his letter that both parties had orally argued the case before the Court of Appeals prior to the case being transferred to the Supreme Court. See App. 36. The Petitioner was informed that his case had been docketed in the Supreme Court of Georgia on June 6, 1986, with

specific reference in said notice that the case was "expected" to be assigned to the September, 1986, oral argument calendar. See App. 34. Petitioner relying upon the notice waited for the Clerk of the Supreme Court to notify him of the exact date and term that the case would be assigned for oral argument.

Rule 49 of the rules of the Supreme Court of Georgia affords an appellant the right to oral argument after having made a written request to the Clerk of the Supreme Court of Georgia. See App. 48. This rule is not discretionary in its application but is a right afforded every person when a written request is made by an appellant. The Supreme Court of Georgia rendered its decision dated March 3, 1987, without providing the Petitioner an opportunity to orally argue the merits of his case. Failure of the Supreme Court of Georgia to afford the Petitioner the opportunity to so argue his case as afforded other petitioners in his class effectively denied him his right to appeal pursuant to O.C.G.A. 5-6-33. Additionally, it denied Appellant his right to both due process and equal protection of law pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I, Paragraph 1 and 2 of the 1983 Georgia Constitution. Further, Petitioner has effectively been denied his right to defend his cause of action in the Supreme Court of Georgia as afforded him under Article I, Section I, Paragraph 12, of the 1983 Georgia Constitution.

Petitioner's constitutional right to be heard has been particularly violated in this case since it was his intent to orally argue in reference to Enumeration of Error no. 1 contained in his brief as addressed by the Supreme Court of Georgia in Division One of its opinion dated March 3,

1987, that the trial court's charging the jury that the defendant could be acquitted upon reasonable doubt *and* proof of good character generated in their minds (See App. 50) effectively denied Petitioner a critical and central defense at trial, thus, violating his right to due process pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I, Paragraph 1, of the 1983 Georgia Constitution. These constitutional arguments were raised in the trial court by Appellant at the motion for new trial (MNT p. 18). Since Petitioner did not present the constitutional arguments in his original brief that was submitted to the Court of Appeals and to the Supreme Court of Georgia, the Supreme Court of Georgia did not address the constitutional error in reference to the charge which they found to, in fact, be error. The Court instead applied the highly probable test of a nonconstitutional error pursuant to its holding in *Johnson v. State,* 248 Ga. 59, 230 S.E.2d 869 (1976).

The Supreme Court of Georgia has consistently held that failure of an appellant to argue an area of law, either in his brief *or* at oral argument, will result in a finding by the court that the argument has been abandoned, *Balkcomb v. Defore,* 219 Ga. 641, 135 S.E.2d 425 (1964). Thus, by the Supreme Court of Georgia failing to afford Petitioner his right to oral argument, it has resulted in his being effectively denied due process and equal protection of the law afforded to him by the Fifth and Fourteenth Amendments since he was not able to perfect the record and place the constitutional issue before the Supreme Court of Georgia.

Had Petitioner been made aware that the Supreme Court of Georgia did not intend to afford him his re-

quested oral argument, he would have submitted a supplemental brief raising the constitutional arguments. This would have afforded the Supreme Court of Georgia an opportunity to consider those arguments prior to ruling and Petitioner would be protected with those arguments having been raised on appeal and, thus, not considered to have been abandoned. The Supreme Court of Georgia concluded that the complained of jury charge (See App. 50) given in his case was an incorrect statement of the law and constituted error. The Petitioner, by being denied oral argument, has in essence been prevented from arguing that the error is of constitutional magnitude and that a different standard than the highly probable test applied by the Supreme Court of Georgia must be considered.

This Honorable Court in *Chapman v. California,* 386 U.S. 18, 17 L. Ed. 2d 705, 87 S. Ct. 824 (1967), set out the applicable constitutional test to consider, e.g., whether there is a reasonable possibility that the error complained of might have contributed to the conviction. The constitutional standard would require the Supreme Court of Georgia to determine if the error was harmless beyond a reasonable doubt and whether the beneficiary of the error, being the State of Georgia, had proved beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. The Supreme Court of Georgia promulgated a rule which gives an appellant the right to oral argument upon request. Both the Constitution of Georgia and specific Georgia Statutes afford a person convicted of a crime the right to an appeal and the opportunity to be heard. Failure to give Petitioner oral argument has denied him both Equal Protection and Due Process.

This Honorable Court has held that where the state chooses to act in an area where its actions has significant discretionary elements, it must still perform those actions in accord with the due process clause, *Evitts v. Lucy,* 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985). Petitioner would urge this Court to grant Certiorari to review the failure of the Supreme Court of Georgia to allow Petitioner the right of oral argument.

B. WHETHER THE EVIDENCE PRESENTED AT PETITIONER'S TRIAL WAS SUFFICIENT TO CONVINCE A RATIONAL TRYER OF FACT TO FIND EACH SUBSTANTIVE ELEMENT OF THE CRIMINAL OFFENSES CHARGED BEYOND A REASONABLE DOUBT.

Petitioner was convicted of seven counts of malpractice in office and three counts of theft by conversion. The Supreme Court of Georgia has held that the word "malpractice" means evil, or bad or wrong practices. In *Cargill v. State,* 194 Ga. 1 (1942), the Supreme Court of Georgia held that it was essential that an evil intent or motive must accompany the act or that the act was done with such gross negligence as amounting to fraud. They noted that an official may not be found guilty of malpractice in office if said act is committed by misfortune or accident. Thus, the Supreme Court of Georgia has ruled that the act constituting malpractice in office is not a crime unless committed with an evil design or intent which demand that the officer be convicted and the penalties inflicted upon him.

This Court in *Jackson v. Virginia,* 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), has established the

standard of review to be applied regarding sufficiency of evidence in a criminal conviction. Specifically, this court held that the proper standard of review is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Petitioner respectfully maintains that in applying this standard to the facts of his case, it is clear that after viewing the evidence in the light most favorable to the prosecution, the trier of fact in his case simply could not have found the essential elements of the crimes of theft by conversion and malpractice in office beyond a reasonable doubt.

The state failed to provide any evidence as to the malpractice claims to prove that Petitioner acted in any manner which satisfactorily appears that an evil design or bad act on his part was intended. The facts as established at the trial of Petitioner's case established: an accountant testified on behalf of the state in reference to counts seven, eight, nine and ten concerning shortages that were found in certain accounts of the Probate Court. The state alleged that based upon a finding of a shortage of money, Petitioner had committed malpractice in office by submitting a report on the monthly basis to the Finance Department which did not reflect the shortage (T-Vol. 3, p. 131-136).

No other evidence was submitted to show that the Petitioner actually prepared those documents or personally took any affirmative action to collect the money, handle deposits and accounts of the money received by the Probate Court and, subsequently, maintained and drafted the statement to be submitted to the Finance Department

on a monthly basis. On the contrary he personally testified that he depended solely upon his staff to do the ledger, the books, all accounts and to submit the appropriate reports to the Finance Department (T-Vol. 4, p. 126). Petitioner adamantly denied as to each count having received any of the money personally or preparing any of the reports knowing that the reports and funds were incorrect (T-Vol. 4, p. 126-188). There was no evidence introduced by the State to prove any evil or bad intent on the part of Petitioner in respect to those accounts and the filing of the designated documents. An individual technically exceeding his authority is not enough to support a conviction of malpractice in office under Georgia law absent evidence of criminal intent and a criminal act.

As to count eleven, the State offered testimony to establish that Petitioner had received a $1,000 travel advance by the county (T-Vol. 3, 141-148). Testimony further established that this travel advance had been approved by the Chatham County Commissioners (T-Vol. 3, 149). The basis of the criminal count against Petitioner was that he failed to file the appropriate administrative travel voucher after his return from the trip. Again, the evidence fails to establish any criminal intent, evil or bad act on the part of the Petitioner in respect to this allegation.

Petitioner testified that he attended a conference on mental health in San Francisco after receiving a $1,000 advance to make the trip and expended those funds properly (T-Vol. 4, p. 128-129). The State offered no evidence that he did not take the trip or properly expend those funds. He further stated that he had made numerous trips in the past and that all vouchers and receipts had been turned

over to his secretary, Bonnie Penton, to file the appropriate papers (T-Vol. 4, p. 130). Again, the evidence fails to establish any criminal intent, evil or bad acts on the part of Petitioner in reference to this allegation.

As to counts twelve and thirteen, Petitioner was charged with the receiving of estate accounts which exceeded $2,500 and not turning them over to the county administrator. The State did not argue that Petitioner converted any funds in those accounts to his own use or did anything other than deposit the accounts in a bank which in fact earned interest for the estate and enhanced the corpus of the estate. They simply alleged an exceeding of statutory authority. Again, the evidence fails to establish any proof of any evidence of an evil, bad or criminal design or intent in reference to counts twelve and thirteen. Petitioner testified as to those estates that he had not taken any steps to escheat the accounts until after the legislature had simplified the escheat laws (T-Vol. 4, p. 144). The money had been maintained in Nicolas County, West Virginia, in a certificate of deposit earning interest, thus, enhancing the estate (T-Vol. 4, p. 145).

As to counts one, two and three, theft by conversion, the evidence at trial failed to establish any criminal design or intent on the part of the Petitioner. The State had admitted into evidence forty-two checks of Petitioner's. Petitioner admitted that they were his checks and testified that he had repaid the county for them; turned them over to the Sheriff upon his being advised that his secretary kept them in the safe and not deposited them (T-Vol. 4, p. 120-123); and that he had no knowledge that they were not deposited when they were written. His secretary testified that on occasion Petitioner had asked her to hold the checks until he could make a deposit. She identified the

forty-two checks (T-Vol. 2, p. 149-151). Penton testified that the reason that she would not deposit the checks was that there was insufficient funds in the bank to pay them (she kept the ledger for Petitioner's checking account) and that if there were sufficient funds, she would deposit them (T-Vol. 3, p. 50-51).

Ben Aronson, a state's witness and CPA, testified that Bonnie Penton told him about the checks and that Judge Cook was not aware that she had held them (T-Vol. 3, p. 58). Further, that she had not told the Petitioner because she was afraid she would be fired. Additionally, Clarence Taylor, another CPA, testified that he compared the forty-two checks to the correct balance in the First Bank account and that every check written had sufficient funds in that account on the day it was written to cover the check except on four occasions and that the Petitioner had sufficient funds in his other account at C & S Bank to cover those four on the day they were written (T-Vol. 4, p. 102).

Petitioner suggests that there was no evidence presented by the State on these Counts to prove any criminal intent to convert the funds of the Probate Court to his own use constituting theft by conversion. Petitioner respectfully submits that in applying the standard of *Jackson v. Virginia,* supra, that no rational trier of fact could have found the defendant guilty beyond a reasonable doubt based upon the evidence presented at his trial. Petitioner maintains that his right to Due Process under the Fifth and Fourteenth Amendments were violated and that the Writ should issue and the Court below be reversed.

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CONCLUSION

The Petition for Writ of Certiorari should be granted and a Writ of Certiorari should issue to review the judgment of the Supreme Court of Georgia.

Respectfully submitted,

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APPENDIX "A"

In the Supreme Court of Georgia

Decided: March 3, 1987

43586. COOK v. THE STATE

PER CURIAM.

The appellant, Robert R. Cook, was the Judge of the Chatham County Probate Court from 1972 until December 31, 1984. On June 30, 1983, the appellant was indicted for the offenses of theft by taking, theft by conversion, and malpractice in office. On June 27, 1985, a Chatham County jury found him not guilty of three counts of theft by taking, guilty of three counts of theft by conversion, and guilty of seven counts of malpractice in office. His total sentences amount to 6 years imprisonment followed by 5 years on probation and over $7,000 in fines. We affirm.

The evidence presented at trial indicated that money collected for marriage licenses and pistol permits was kept in a cashbox in the probate court's office. The former chief deputy clerk, Wayne Williams, testified that there were no problems until 1977, when the daily deposits he was making were short because of IOUs placed in the box. He testified that the first IOU he saw was issued by the appellant. He also testified that when he asked the appellant to pay the IOUs that sometimes he would pay them and sometimes he would say that he would pay them when he could. The frustration with trying to keep the deposits correct caused Williams to abdicate the duties, and the

responsibility landed in the hands of Bonnie Penton, the appellant's secretary.

Problems with the cashbox escalated. Exchanging checks and IOUs for cash in the cashbox became a common practice for the employees of the probate court and other employees around the court, and cash from the cashbox was occasionally used to buy gifts for employees in the office. The funds that had been deposited daily by Williams were deposited on an irregular basis after the responsibility changed hands and an audit showed that there was a shortage of approximately $6300 in 1980, $9800 in 1981, and $4000 from January to September of 1982 in the marriage license account and a shortage of approximately $10,000 in 1980, $14,500 in 1981, and $6,000 for the period audited in 1982 in the pistol permit account.

The auditor, Donald James, CPA, testified that numerous checks placed in the cashbox were returned for insufficient funds and that several of the appellant's checks were among the returned checks. He also testified that the internal control over the cash, the bank accounts and the whole bookkeepping system was very poor and inadequate for the circumstances. The money deposited by the probate court did not equal the total receipts and there was a shortage for each month covered by the audit.

Williams and others testified that although the problem of money shortages caused by the IOUs was discussed with the appellant, he took no action to correct the situation. One employee, Anna Maria Thomas, testified that sometime in 1979 or 1980 there was a discussion with the appellant about working out a procedure to stop the problems but that the appellant responded that it was the re-

sponsibility of the employees to work everything out and to do the best they could.

The appellant's secretary testified that the appellant told her on occasion to hold the checks he had written for the purpose of obtaining cash from the cashbox until he made a deposit. She also testified that the appellant fired her after the problem with the shortages surfaced and that she told one of the investigators that it was her intention to "sink . . . the Judge's ship."

The appellant testified that from the time he first became the probate court judge he relied upon his clerk and secretary to handle the administrative duties of the court. He stated that he relied "completely and totally" on his secretary to keep his checking account in order. He denied that he told her to hold any checks, and stated that the first time he heard about the checks was one night when she informed him that there was a shortage in the pistol permit account. The next day he arranged to meet with his secretary and a friend who was an accountant to determine the extent of the problem. The accountant informed them that there was a large shortage in the account and that there was in excess of $2,000 in checks written by the appellant that were never deposited. The appellant testified that he was shocked to learn about the checks and that he immediately deposited an amount of money equal to the checks in the bank. He then contacted Sheriff Walter Mitchell, requested a complete investigation, and supplied the investigators with all the information they requested.

The state produced 42 of the appellant's checks totaling $2,062, some dating to 1980, that had never been pro-

cessed through the bank. An accountant testified that the appellant's checking account had sufficient funds to cover all but 4 of the 42 checks at the time they written.

The appellant also testified that he was unaware of shortages. With regard to the malpractice in office charges that resulted from the shortages in 1980, 1981, and 1982, he stated that he depended solely on his staff to do the ledger books and that he accepted what they did as "being absolutely the truth."

The evidence showed that the appellant requested and was given a $1,000 advance for a trip to California, and that the appellant did not turn in a travel expense from as required. The appellant testified that the trip *cost* more than $1,000, that in all the trips he had taken before he had never been charged with failure to turn in the proper reports, and that the receipts for the trip were all given to his secretary and that one receipt was either "lost by her or misplaced." The appellant's secretary testified that the appellant lost the receipt.

A state's witness testified that the $1,000 check was negotiated at a local bank. The appellant received $700 in cash and deposited $300 into his checking account. One of the state's exhibits shows that the $300 was needed to cover shortages in the appellant's bank account.

There was also evidence to show that the appellant failed to appoint the county administrator, as required by law, to handle two estates exceeding $2,500.

The appellant relied heavily upon his good character as a defense. He testified at length about his community involvement and activities within the legal community, and

he also sought to prove his character through other witnesses. After the second character witness testified, the court asked appellant's counsel how many character witnesses he had. He indicated that there were approximately 50 witnesses who were ready to testify as to the appellant's good character, but that if after they put up ten he would ask the District Attorney to stipulate as to the appellant's good character and allow the other names to be read to the jury. The court ruled that the appellant could pick seven to testify and that the state agreed that the names of the other witnesses could be read to the jury.

The appellant also sought to show through the testimony of the character witnesses that he did not lead an extravagant lifestyle, but the prosecution objected on the ground that it was not relevant. The trial court sustained the objection and the appellant was not allowed to introduce evidence showing that the appellant did not lead an extravagant lifestyle.

1. The appellant asserts that the trial court erred in refusing to give his requested charge and in giving the following charge on good character: "I further charge you, ladies and gentlemen, that regardless of whether or not the defendant has any other defense, and you have heard his testimony and the defense offered, and regardless of whether or not there is any other evidence in the record upon which a reasonable doubt as to his guilt could be based, proof of good character may of itself constitute such a defense in his behalf, and you, the jury overriding any amount of positive evidence pointing to the guilt of the defendant may, if you see fit, acquit the defendant upon the reasonable doubt *and* proof of good character generated in your minds." (Emphasis supplied.)[1]

In *Keller v. State,* 245 Ga. 522 (265 SE2d 813) (1980), this court considered Keller's challenge to a certain portion of a charge on good character. Although we did not examine the pattern charge for errors, we recommended its use because the pattern charge did not include the statement Keller contended was erroneous.

In *Millwood v. State,* 174 Ga. App. 113 (329 SE2d 273) (1985), the Court of Appeals was faced with a challenge to the recommended pattern charge. The Court of Appeals determined that the instruction which originated in *Lomis v. State,* 78 Ga. App. 336, 358 (51 SE2d 33) (1948), was changed when it was copied in the Criminal Jury Instruction book. The pattern charge authorized acquittal "upon the reasonable doubt *and* proof of good character generated in your minds," whereas the instruction in *Lomis,* supra, authorized acquittal "upon the reasonable doubt *that* proof of good character generated in your minds." The Court of Appeals agreed with Millwood "that the use of the coordinating conjunction *and,* instead of the subordinating conjunction *that,* in effect returns the law to the status abolished by the *Shropshire* case. . . . [T]he criticized instruction requires the jury to have a reasonable doubt *and* proof of good character rather than a reasonable doubt engendered or occasioned, or caused, or raised, by proof of good character." (Emphasis supplied.) *Millwood,* supra, at p. 114.

The order entered pursuant to the motion for new trial indicates that the trial court read *Millwood,* supra, and *Keller,* supra, to be in conflict with one another and that this court failed to resolve the conflict when it refused to grant a writ of ceritiorari filed in *Millwood,* supra.

We find no conflict between *Millwood,* supra, and *Keller,* supra. The court in *Keller,* supra, did recommend the use of the pattern jury charge, but it did not consider a challenge to the wording of the charge. The court in *Millwood,* supra, had before it a challenge to the wording of the charge and it found that the wording was erroneous and did not correctly instruct the jury regarding the principals of proof of good character.

Viewing the charge as a whole and the evidence presented to the jury, we find that it is highly probably that the error in the charge as given did not contribute to the verdict. *Johnson v. State,* 238 Ga. 59, 61 (230 SE2d 869) (1976).

2. Inasmuch as the appellant was acquitted on the theft by taking charges and the total amount of the checks involved in the theft by conversion was only a little over $2,000, we find that the error committed by the trial court in refusing to allow the appellant to present evidence showing his lack of extravagant lifestyle to be harmless error.

3. Although no exact punishment is provided in the malpractice statute, OCGA § 45-11-1, OCGA § 16-1-10 provides that in a case in which no punishment is provided, the offense shall be punished as a misdemeanor. We find no unconstitutional vagueness, indefiniteness or uncertainty, and thus no error.

4. Reviewing the evidence in the light most favorable to the prosecution we find that a rational trier of fact could have found the essential elements of theft by conversion and malpractice in office beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307 (99 SC 2781, 61 LE2d

560) (1979) and *Humphrey v. State,* 252 Ga. 525, 527 (314 SE2d 436) (1984).

5. We find no errors in the appellant's remaining enumerations.

Judgment affirmed. All the Justices concur, except Clarke, P.J., Smith and Bell, JJ, who dissent.

ENDNOTES

[1] Suggested Pattern Jury Instructions, Vol. 2, Criminal Cases, p. 47, provides a new jury instruction on good character. It may also be found in Justice Gregory's dissent in *State v. Braddy,* 254 Ga. 366, 369 (— SE2d —) (1985).

43586. COOK v. THE STATE

SMITH, Justice, dissenting.

The last statement of the law charged to the jury ended with the charge that they could could "acquit the defendant upon the reasonable doubt *and* proof of good character generated in your minds." How, in light of the fact that the appellant relied heavily on his good moral character as a defense, can this erroneous instruction be harmless?

APPENDIX "B"

Clerk's Office, Supreme Court of Georgia

DEAR SIR: ATLANTA 3/24/87

The motion for a rehearing was denied today:

Case No. 43586, Cook v. The State. Clarke, P.J., Smith & Bell, J.J., dissent.

Yours very truly,

MRS. JOLINE B. WILLIAMS,
Clerk

APPENDIX "C"

SUPREME COURT OF GEORGIA

ATLANTA March 24, 1987

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

ROBERT R. COOK v. THE STATE

It is ordered that the request for oral argument in this case is hereby denied.

All the Justices concur, except Weltner and Hunt, JJ., who dissent.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Hazel E. Hallford
Deputy Clerk

APPENDIX "D"

SUPREME COURT OF GEORGIA

ATLANTA, March 24, 1987

The Honorable Supreme Court met pursuant to adjournment.

BY: Smith, J.

The following direction was given:

ROBERT R. COOK V. THE STATE

Upon consideration of the motion for a stay of this court's remittitur in order that an appeal or an application for certiorari may be filed in the Supreme Court of the United States to obtain a review of this court's judgment rendered in this case on such motion is hereby granted, subject to the following conditions:

(1) The clerk of this court is directed to withhold the transmittal of such remittitur to the trial court for ninety days from the date of this court's judgment.

(2) The clerk of this court is directed to transmit such remittitur to the trial court not later than the ninety-fifth day from the date of this court's judgment, provided that the clerk shall continue to withhold the transmittal of such remittitur if the clerk is notified in writing that an appeal or application for certiorari has been timely filed in the Supreme Court of the United States. Upon the timely filing of such appeal or application in the Supreme Court of the United States, the clerk is directed to withhold the transmittal of such remittitur until the final disposition of the case by that court.

/s/ George T. Smith
Justice

APPENDIX "E"

COURT OF APPEALS
OF THE STATE OF GEORGIA

ATLANTA, June 5, 1986

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

72062. COOK v. THE STATE.

This case came before this court upon an appeal from the Superior Court of Chatham County, and upon a record formally certified and transmitted by the clerk of that court; and this court being of the opinion that the case is one of which the Supreme Court and not this court has jurisdiction, the clerk of this court is ordered to dismiss the case from the files and to transmit the records to the Clerk of the Supreme Court together with a copy of this order.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta

JUN 5 1986

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Alton Hawk, Clerk.

APPENDIX "F"

STATE OF GEORGIA
CHATHAM COUNTY SUPERIOR COURT

THE STATE	) Case Number:
	) 08301024 Ct. 2
vs.	)
	) Offense:
ROBERT R. COOK	) Theft by Conversion

Tried at ——— Term, 1985, JURY VERDICT of guilty:

WHEREUPON, the defendant being before the Bar of this Court and showing no reason why the sentence of the Court should not be pronounced: It is considered, ordered and adjudged by the Court, that you, ROBERT R. COOK the defendant in the above stated case, be taken from the Bar of this Court to the Jail of said County where you shall be safely kept until demanded by a guard to be sent from the authorities of this State for the purpose of conveying you to the Penitentiary or such other places as the Director of the Department of Corrections of this State may direct, and be punished by confinement and labor in said Penitentiary, or such other place or places as may be directed as aforesaid by the Director of the Department of Correction, for 1 (ONE) years to be computed from this date, provided you remain in jail and do not file any motion or other proceeding to interfere with the operation of this sentence: in case any such motion or other proceeding is filed and you remain in jail pending the

same, this sentence shall be computed from the time you return to custody after a final disposition of all pending matters affecting the execution of this sentence. This sentence to run consecutive to the sentence imposed on Count 1. In addition, a fine in the amount of $1,000 plus $50 pursuant to O.C.G.A. 15-21-70. The fine to be paid within 18 months after release from custody.

It is further ordered, that the Clerk of this Court notify the Director of the Department of Corrections at Atlanta, Georgia, of your conviction and sentence as required by law.

In open Court, this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court
Brunswick Judicial Circuit

A TRUE COPY

/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA.

FILED IN OFFICE
JUL 12, 1985

/s/ Betty B. Taylor
Dep. Clerk, Superior Court
CHATHAM COUNTY, GA.

STATE OF GEORGIA

CHATHAM COUNTY SUPERIOR COURT

THE STATE	)	Case Number:
	)	08301024 Ct. 3
vs.	)	
	)	Offense:
ROBERT R. COOK	)	Theft by Conversion

Tried at June Term, 1985, JURY VERDICT of guilty:

WHEREUPON, the defendant being before the Bar of this Court and showing no reason why the sentence of the Court should not be pronounced: It is considered, ordered and adjudged by the Court, that you, ROBERT R. COOK the defendant in the above stated case, be taken from the Bar of this Court to the Jail of said County where you shall be safely kept until demanded by a guard to be sent from the authorities of this State for the purpose of conveying you to the Penitentiary or such other places as the Director of the Department of Corrections of this State may direct, and be punished by confinement and labor in said Penitentiary, or such other place or places as may be directed as aforesaid by the Director of the Department of Correction, for 5 (FIVE) years to be computed from this date, provided you remain in jail and do not file any motion or other proceeding to interfere with the operation of this sentence: in case any such motion or other proceeding is filed and you remain in jail pending the same, this sentence shall be computed from the time you return to custody after a final disposition of all pending matters affecting the execution of this sentence. This sentence to run concurrent to the sentence imposed on Count 1. In addition, a fine in the amount of $1,000 plus $50 pursuant to O.C.G.A. 15-21-70. Said fine to be paid within 18 months after release from custody.

It is further ordered, that the Clerk of this Court notify the Director of the Department of Corrections at Atlanta, Georgia, of your conviction and sentence as required by law.

In open Court, this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court
Brunswick Judicial Circuit

A TRUE COPY

/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA.

FILED IN OFFICE
JUL 12, 1985

/s/ Betty B. Taylor
Dep. Clerk, Superior Court
CHATHAM COUNTY, GA.

THE SUPERIOR COURT IN
CHATHAM COUNTY, GEORGIA
vs.
ROBERT R. COOK

(Filed July 12, 1985)

FINAL DISPOSITION

CRIMINAL ACTION
NO. 08301024 Ct. 1
OFFENSE(S)

MALPRACTICE IN OFFICE

JUNE TERM, 1985

☐ Plea:
☐ Negotiated
☐ Guilty on Count(s) ———
☐ Nolo Contendere on Count(s)———
☐ To Lesser Included Offense(s)———
———
On Count(s) ———

X Jury
☐ Non-Jury

X Verdict:
X Guilty on Count(s) 1-3; 7-13
X Not Guilty on Count(s) 4, 5, 6
☐ Guilty of Included Offense(s) of ———
on Count(s) ———

☐ Other Disposition
☐ Nolle Prosequi Order on Count(s) ———
☐ Dead Docket Order on Count(s) ———

(See Separate Order)

X Defendant was advised on his/her right to have this sentence reviewed by the Superior Courts Sentence Review Panel.

[ ] FELONY SENTENCE [X] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. WHEREUPON, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of ONE YEAR in the State Penal System or such other institution as the Commissioner of the State Department of Offender Rehabilitation may direct, to be computed as provided by law. HOWEVER, it is further ordered by the Court:

X1) THAT the above sentence may be served on probation

2) THAT upon service of ———— of the above sentence, the remainder of ———— may be served on probation PROVIDED that the said defendant complies with the following general and other conditions herein imposed by the Court as a part of this sentence.

[X] GENERAL CONDITIONS OF PROBATION

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

X1) Do not violate the criminal laws of any governmental unit.

X2) Avoid injurious and vicious habits—especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.

X3) Avoid persons or places of disreputable or harmful character.

X4) Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him (her) at home or elsewhere.

X5) Work faithfully at suitable employment insofar as may be possible.

X6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

X7) Support his legal dependants to the best of his ability.

[X] OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of $1,000 plus $50 or 10%, whichever is less pursuant to O.C.G.A. § 15-21-70. This sentence is to run consecutive to the sentence imposed on Count 1. Said fine to be paid within 18 months after release from custody by sentence under Count 2.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

The defendant was represented by the Honorable Alex Zipperer & Robert Barker, Attorney at Law, Chatham County, by (Employment).

By the Court ....., 19....

So ordered this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court,
Eastern Judicial Circuit, GA

A TRUE COPY
/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA

THE SUPERIOR COURT IN
CHATHAM COUNTY, GEORGIA
vs.
ROBERT R. COOK

(Filed July 12, 1985)

FINAL DISPOSITION

CRIMINAL ACTION
NO. 08301024 Ct. 8
OFFENSE(S)

MALPRACTICE IN OFFICE

JUNE TERM, 1985

☐ Plea:
☐ Negotiated
☐ Guilty on Count(s) ———
☐ Nolo Contendere on Count(s)———
☐ To Lesser Included Offense(s)———
———
On Count(s) ———

X Jury
☐ Non-Jury

X Verdict:
X Guilty on Count(s) 1-3; 7-13
X Not Guilty on Count(s) 4, 5, 6
☐ Guilty of Included Offense(s) of ——— on Count(s) ———

☐ Other Disposition
☐ Nolle Prosequi Order on Count(s) ———
☐ Dead Docket Order on Count(s) ———

(See Separate Order)

X Defendant was advised on his/her right to have this sentence reviewed by the Superior Courts Sentence Review Panel.

[ ] FELONY SENTENCE [X] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. WHEREUPON, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of ONE YEAR in the State Penal System or such other institution as the Commissioner of the State Department of Offender Rehabilitation may direct, to be computed as provided by law. HOWEVER, it is further ordered by the Court:

X1) THAT the above sentence may be served on probation

2) THAT upon service of ——— of the above sentence, the remainder of ——— may be served on probation PROVIDED that the said defendant complies with the following general and other conditions herein imposed by the Court as a part of this sentence.

[X] GENERAL CONDITIONS OF PROBATION

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

X1) Do not violate the criminal laws of any governmental unit.

X2) Avoid injurious and vicious habits—especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.

X3) Avoid persons or places of disreputable or harmful character.

X4) Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him (her) at home or elsewhere.

X5) Work faithfully at suitable employment insofar as may be possible.

X6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

X7) Support his legal dependants to the best of his ability.

[X] OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of $1,000 plus $50 or 10%, whichever is less pursuant to O.C.G.A. § 15-21-70. This sentence is to fun consecutive to the sentence imposed on Count 7. Said fine to be paid within 18 months after release from custody by sentence under Count 2.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation

herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

The defendant was represented by the Honorable Alex Zipperer & Robert Barker, Attorney at Law, Chatham County, by (Employment).

By the Court ....., 19.....

So ordered this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court,
Eastern Judicial Circuit, GA

A TRUE COPY
/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA

THE SUPERIOR COURT IN
CHATHAM COUNTY, GEORGIA
vs.
ROBERT R. COOK

(Filed July 12, 1985)

FINAL DISPOSITION

CRIMINAL ACTION
NO. 08301024 Ct. 9
OFFENSE(S)

MALPRACTICE IN OFFICE

JUNE TERM, 1985

☐ Plea:
☐ Negotiated
☐ Guilty on Count(s) ———
☐ Nolo Contendere on Count(s)———
☐ To Lesser Included Offense(s)———
———
On Count(s) ———

X Jury
☐ Non-Jury

X Verdict:
X Guilty on Count(s) 1-3; 7-13
X Not Guilty on Count(s) 4, 5, 6
☐ Guilty of Included Offense(s) of ——— on Count(s) ———

☐ Other Disposition
☐ Nolle Prosequi Order on Count(s) ———
☐ Dead Docket Order on Count(s) ———

(See Separate Order)

X Defendant was advised on his/her right to have this sentence reviewed by the Superior Courts Sentence Review Panel.

[ ] FELONY SENTENCE [X] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. WHEREUPON, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of ONE YEAR in the State Penal System or such other institution as the Commissioner of the State Department of Offender Rehabilitation may direct, to be computed as provided by law. HOWEVER, it is further ordered by the Court:

X1) THAT the above sentence may be served on probation

2) THAT upon service of ——— of the above sentence, the remainder of ——— may be served on probation PROVIDED that the said defendant complies with the following general and other conditions herein imposed by the Court as a part of this sentence.

[X] GENERAL CONDITIONS OF PROBATION

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

X1) Do not violate the criminal laws of any governmental unit.

X2) Avoid injurious and vicious habits—especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.

X3) Avoid persons or places of disreputable or harmful character.

X4) Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him (her) at home or elsewhere.

X5) Work faithfully at suitable employment insofar as may be possible.

X6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

X7) Support his legal dependants to the best of his ability.

[X] OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of $1,000 plus $50 or 10%, whichever is less pursuant to O.C.G.A. § 15-21-70. This sentence is to run consecutive to the sentence imposed on Count 8. Said fine to be paid within 18 months after release from custody by sentence under Count 2.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation

herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

The defendant was represented by the Honorable Alex Zipperer & Robert Barker, Attorney at Law, Chatham County, by (Employment).

By the Court ....., 19.....

So ordered this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court,
Eastern Judicial Circuit, GA

A TRUE COPY
/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA

THE SUPERIOR COURT IN
CHATHAM COUNTY, GEORGIA
vs.
ROBERT R. COOK

(Filed July 12, 1985)

FINAL DISPOSITION

CRIMINAL ACTION
NO. 08301024 Ct. 10
OFFENSE(S)

MALPRACTICE IN OFFICE

JUNE TERM, 1985

☐ Plea:
☐ Negotiated
☐ Guilty on Count(s) ———
☐ Nolo Contendere on Count(s)———
☐ To Lesser Included Offense(s)———
———
On Count(s) ———

X Jury
☐ Non-Jury

X Verdict:
X Guilty on Count(s) 1-3; 7-13
X Not Guilty on Count(s) 4, 5, 6
☐ Guilty of Included Offense(s) of ———
on Count(s) ———

☐ Other Disposition
☐ Nolle Prosequi Order on Count(s) ———
☐ Dead Docket Order on Count(s) ———

(See Separate Order)

X Defendant was advised on his/her right to have this sentence reviewed by the Superior Courts Sentence Review Panel.

[ ] FELONY SENTENCE [X] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. WHEREUPON, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of ONE YEAR in the State Penal System or such other institution as the Commissioner of the State Department of Offender Rehabilitation may direct, to be computed as provided by law. HOWEVER, it is further ordered by the Court:

X1) THAT the above sentence may be served on probation

2) THAT upon service of ——— of the above sentence, the remainder of ——— may be served on probation PROVIDED that the said defendant complies with the following general and other conditions herein imposed by the Court as a part of this sentence.

[X] GENERAL CONDITIONS OF PROBATION

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

X1) Do not violate the criminal laws of any governmental unit.

X2) Avoid injurious and vicious habits—especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.

X3) Avoid persons or places of disreputable or harmful character.

X4) Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him (her) at home or elsewhere.

X5) Work faithfully at suitable employment insofar as may be possible.

X6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

X7) Support his legal dependants to the best of his ability.

[X] OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of $1,000 plus $50 or 10%, whichever is less pursuant to O.C.G.A. § 15-21-70. This sentence is to run consecutive to the sentence imposed on Count 9. Said fine to be paid within 18 months after release from custody by sentence under Count 2.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court

may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

The defendant was represented by the Honorable Alex Zipperer & Robert Barker, Attorney at Law, Chatham County, by (Employment).

By the Court ....., 19....

So ordered this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court,
Eastern Judicial Circuit, GA

A TRUE COPY
/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA

THE SUPERIOR COURT IN
CHATHAM COUNTY, GEORGIA
vs.
ROBERT R. COOK

(Filed July 12, 1985)

FINAL DISPOSITION

CRIMINAL ACTION
NO. 08301024 Ct. 11
OFFENSE(S)

MALPRACTICE IN OFFICE

JUNE TERM, 1985

☐ Plea:
☐ Negotiated
☐ Guilty on Count(s) ———
☐ Nolo Contendere on Count(s)———
☐ To Lesser Included Offense(s)———
On Count(s) ———

X Jury
☐ Non-Jury

X Verdict:
X Guilty on Count(s) 1-3; 7-13
X Not Guilty on Count(s) 4, 5, 6
☐ Guilty of Included Offense(s) of ——— on Count(s) ———

☐ Other Disposition
☐ Nolle Prosequi Order on Count(s) ———
☐ Dead Docket Order on Count(s) ———

(See Separate Order)

X Defendant was advised on his/her right to have this sentence reviewed by the Superior Courts Sentence Review Panel.

[ ] FELONY SENTENCE [X] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. WHEREUPON, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of ONE YEAR in the State Penal System or such other institution as the Commissioner of the State Department of Offender Rehabilitation may direct, to be computed as provided by law. HOWEVER, it is further ordered by the Court:

X1) THAT the above sentence may be served on probation

2) THAT upon service of ——— of the above sentence, the remainder of ——— may be served on probation PROVIDED that the said defendant complies with the following general and other conditions herein imposed by the Court as a part of this sentence.

[X] GENERAL CONDITIONS OF PROBATION

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

X1) Do not violate the criminal laws of any governmental unit.

X2) Avoid injurious and vicious habits—especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.

X3) Avoid persons or places of disreputable or harmful character.

X4) Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him (her) at home or elsewhere.

X5) Work faithfully at suitable employment insofar as may be possible.

X6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

X7) Support his legal dependants to the best of his ability.

[X] OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of $1,000 plus $50 or 10%, whichever is less pursuant to O.C.G.A. § 15-21-70. This sentence is to run consecutive to the sentence imposed on Count 10. Said fine to be paid within 18 months after release from custody by sentence under Count 2.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation

herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

The defendant was represented by the Honorable Alex Zipperer & Robert Barker, Attorney at Law, Chatham County, by (Employment).

By the Court ....., 19....

So ordered this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court,
Eastern Judicial Circuit, GA

A TRUE COPY
/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA

THE SUPERIOR COURT IN
CHATHAM COUNTY, GEORGIA
vs.
ROBERT R. COOK

(Filed July 12, 1985)

FINAL DISPOSITION

CRIMINAL ACTION
NO. 08301024 Ct. 12 and 13
OFFENSE(S)

MALPRACTICE IN OFFICE

JUNE TERM, 1985

☐ Plea:
☐ Negotiated
☐ Guilty on Count(s) ———
☐ Nolo Contendere on Count(s)———
☐ To Lesser Included Offense(s)———
———
On Count(s) ———

X Jury
☐ Non-Jury

X Verdict:
X Guilty on Count(s) 1-3; 7-13
X Not Guilty on Count(s) 4, 5, 6
☐ Guilty of Included Offense(s) of ——— on Count(s) ———

☐ Other Disposition
☐ Nolle Prosequi Order on Count(s) ———
☐ Dead Docket Order on Count(s) ———

(See Separate Order)

X Defendant was advised on his/her right to have this sentence reviewed by the Superior Courts Sentence Review Panel.

[ ] FELONY SENTENCE [X] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. WHEREUPON, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of ONE YEAR ON EACH COUNT in the State Penal System or such other institution as the Commissioner of the State Department of Offender Rehabilitation may direct, to be computed as provided by law. HOWEVER, it is further ordered by the Court:

X1) THAT the above sentence may be served on probation

2) THAT upon service of ——— of the above sentence, the remainder of ——— may be served on probation PROVIDED that the said defendant complies with the following general and other conditions herein imposed by the Court as a part of this sentence.

[X] GENERAL CONDITIONS OF PROBATION

The defendant, having been granted the privilege of serving all or part of the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

X1) Do not violate the criminal laws of any governmental unit.

X2) Avoid injurious and vicious habits—especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.

X3) Avoid persons or places of disreputable or harmful character.

X4) Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him (her) at home or elsewhere.

X5) Work faithfully at suitable employment insofar as may be possible.

X6) Do not change his (her) present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

X7) Support his legal dependants to the best of his ability.

[X] OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of $500 plus $50 or 10%, whichever is less pursuant to O.C.G.A. § 15-21-70 on each count. This sentence is to run consecutive to the sentence imposed on Count 1. Said fine to be paid within 18 months after release from custody by sentence under Count 2.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court

may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

The defendant was represented by the Honorable Alex Zipperer & Robert Barker, Attorney at Law, Chatham County, by (Employment).

By the Court ....., 19.....

So ordered this 9th day of July, 1985.

/s/ A. Blenn Taylor, Jr.
Judge, Superior Court,
Eastern Judicial Circuit, GA

A TRUE COPY
/s/ Betty B. Taylor
Dep. Clerk, S.C.C.C., GA

APPENDIX "G"

(SEAL)

SUPREME COURT
STATE OF GEORGIA
State Judicial Building
ATLANTA 30334

Thomas O. Marshall, Chief Justice
Harold G. Clarke, Presiding Justice

George T. Smith
Hardy Gregory, Jr.
Charles L. Weltner
Richard Bell
Willis B. Hunt, Jr.
Justices

Joline B. Williams, Clerk
Hazel E. Hallford, Deputy Clerk
Wm. Scott Henwood, Reporter
Faye S. Foster, Asst. Reporter

June 6, 1986

Case No. 43586

ROBERT R. COOK

v.

THE STATE

has been docketed in the Supreme Court today.

If you desire to argue orally, written request for oral argument is necessary (see Rule 49), except in death penalty cases and granted certiorari cases. (NOTE: The Court DIRECTS both sides to argue death penalty cases and expects both sides to argue granted certiorari cases.)

This case is expected to be assigned to the September 1986 oral argument calendar. Calendars showing the schedule for oral argument will be prepared and mailed in advance.

Appellant's briefs and enumeration of errors are due 20 days from the date of docketing (date shown above), as is the payment of $30.00 costs. Appellee's briefs are

due 40 days from the date of docketing or 20 days from the filing of the appellant's briefs, whichever is later. See Rules of the Supreme Court.

Please send us (7) additional copies of appellant's brief filed in the Court of Appeals in this case (attach manuscript cover, please).

Joline B. Williams, Clerk

By: /s/ Dora Anderson

APPENDIX "H"

JACKSON AND SCHIAVONE
Attorneys At Law
111 East Oglethorpe Avenue
P.O. Box 8876
Savannah, Georgia
31412

G. TERRY JACKSON
MICHAEL G. SCHIAVONE

TELEPHONE
(912) 232-2646

June 10, 1986

Joline B. Williams, Clerk
Supreme Court of Georgia
State Judicial Building
Atlanta, Georgia 30334

Re: Robert R. Cook vs. The State
Court of Appeals Case no: 72062
Supreme Court of Georgia Case no: 43586

Dear Ms. Williams:

Per your request, enclosed please find (7) additional copies of appellant's brief and supplemental brief filed in the Court of Appeals of Georgia in this case.

We have previously argued this case before the Court of Appeals but would request oral argument before the Supreme Court of Georgia.

We appreciate your kind consideration in this matter.

Very truly yours,

G. Terry Jackson
Michael G. Schiavone
GTJ/MGS/bcm
enclosures

cc: Spencer Lawton, Jr.

APPENDIX "I"

BILL OF RIGHTS

Art. 1, § 1, ¶ 1 *Art. 1, § 1, ¶ 1*

Paragraph

XXVIII. Enumeration of rights not denial of others.

Paragraph I. Life, liberty, and property.

No person shall be deprived of life, liberty, or property except by due process of law.

1976 Constitution.—Art. I, Sec. 1, Para. I.

Cross references.—Deprivation of liberty and property interests by due process generally, U.S. Const., Amends. 5 and 14; Ga. Const. 1983, Art. I, Sec. I, Para. II. and § 1-2-6. Actions and remedies for deprivation of liberty: habeas corpus, Ga. Const. 1983, Art. I, Sec. I, para. XV; false imprisonment, § 16-5-40; malicious arrest, § 51-7-1. Actions and remedies for deprivation of property: just compensation, Ga. Const. 1983, Art. I, Sec. III, Paras. I and II, and § 22-1-6; property damages, §§ 51-9-1 and 51-10-1. Deprivation of property by due process: attachment, Ch. 3, T. 18; garnishment, Ch. 4, T. 18; prescription and adverse possession, § 45-5-160 et seq. Deprivation of liberty by due process: detention of a child, § 15-11-18; arrest of persons generally, Ch. 4, T. 17. Deprivation of life by due process, see § 17-10-33.

Law reviews.—For article, "Constitutionality of Economic Regulations," see 2 J. of Pub. L. 98 (1953). For article discussing Georgia alimony provisions allowing modification of judgments with respect to federal and state constitutional limitations, see 18 Ga. B.J. 153 (1955). For

article, "Personal Rights, Property Rights and Due Process: A Comparison of Constitutional Protection in the Georgia Supreme Court and the United States Supreme Court," see 9 Mercer L. Rev. 253 (1958). For article supporting the adoption of comprehensive right to counsel legislation, see 3 Ga. St. B.J. 157 (1966). For article criticizing Georgia Supreme Court's decision striking down milk regulation as violative of state due process by application of the full bench rule in Ward v. Big Apple Super Mkts. of Bolton Rd., Inc., 223 Ga. 756, 158 S.E.2d 396 (1967), see 19 Mercer L. Rev. 366 (1968). For article discussing the constitutionality of imposing harsher sentences upon defendants found guilty in new trial after appeal, see 6 Ga. St. B.J. 183 (1969). For article, "A Review of Georgia's Probation Laws," see 6 Ga. St. B.J. 255 (1970). For article, "Delegation in Georgia Local Government Law," see 7 Ga. St. B.J. 9 (1970). For article, "Some Legal Problems Involved in Saving Georgia's Marshlands," see 7 Ga. St. B.J. 27 (1970). For article discussing the evolution of municipal annexation law in Georgia in light of Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1970), see 5 Ga. L. Rev. 499 (1971). For article as to the power of Georgia local governments to regulate the trades and occupations of its citizens, see 9 Ga. L. Rev. 115 (1974). For article discussing available means of discovery for criminal cases in Georgia, see 12 Ga. St. B.J. 134 (1976). For article discussing preliminary hearings in felony cases as necessary to satisfy due process requirements, see 12 Ga. St. B.J. 207 (1976). For article dicussing Allan v. Allan, 236 Ga. 199, 223 S.E.2d 445 (1976), holding Georgia's notice requirement for year's support unconstitutional prior to 1977 revision, see 13 Ga. St. B.J.

85 (1976). For article discussing due process problems with Georgia's post-judgment garnishment procedures, in light of City Fin. Co. v. Winston, 238 Ga. 10, 231 S.E.2d 45 (1976), see 13 Ga. St. B.J. 144 (1977). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

For article surveying developments in Georgia constitutional law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 51 (1981).

For note, "Mental Health Commitment

* * *

APPENDIX "J"

BILL OF RIGHTS

Art. 1, § 1, ¶ 2 *Art. 1, § 1, ¶ 2*

Paragraph II. Protection to person and property; equal protection.

Protection to person and property is the paramoutn duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

1976 Constitution.—Art. 1, Sec. 11, Para. III.

Cross references.—Due process, Ga. Const. 1983, Art. 1, Sec. 1, Para. 1. Taking of private property for public purposes, Ga.Const. 1983, Art. 1, Sec. III, Paras. I, II, and Ga. Const. 1983, Art. III, Sec. VI, Para. III. General laws to operate uniformly throughout state, Ga. Const. 1983, Art. III, Sec. VI, Para IV. Prohibition against discrimination in the extending of credit or the making of loans, Ch. 6, T. 7. Discrimination in extending credit or making loans, § 7-6-1. Discrimination in sale, lease, financing, etc., of housing, § 8-3-200 et seq. Prohibition against discrimination in sale, lease, financing, etc., of housing accommodations. § 8-3-200 et seq. Discrimination in admission of students to public schools, § 20-2-670. Age discrimination in employment, § 34-1-2. Sex discrimination in employment. Ch. 5, T. 34. Duty of common carriers to receive all passengers whom such carriers are able and accustomed to carry, § 46-9-130.

Law reviews.—For article suggesting county unit system discriminates against classes of voters in violation of equal protection clause, see 14 Ga. B.J. 28 (1951). For article, "Personal Rights, Property Rights and Due Process: A Comparison of Constitutional Protection in the Georgia Supreme Court and the United States Supreme Court," see 9 Mercer L. Rev. 253 (1958). For article suggesting potential problems of discrimination in municipal annexation statutes, see 2 Ga. L. Rev. 35 (1967). For article on the effect on receiving government-issued li-

censes after a conviction based on a nolo contendere plea, see 13 Ga. L. Rev. 723 (1979).

For comment on Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969) as to the constitutionality of §§ 15-19-30 through 15-19-34, see 21 Mercer L. Rev. 355 (1969). For comment on City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599 (1970), as to municipal corporation's negligence liability for injuries sustained at municipal golf courses, see 22 Mercer L. Rev. 608 (1971). For comment on Deal v. Seaboard C.L.R.R., 236 Ga. 629, 224 S.E.2d 922 (1976), see 25 Emory L. J. 893 (1976). For comment on Crim v. McWhorter, 242 Ga. 863, 252 S.E.2d 421 (1979), see 31 Mercer L. Rev. 341 (1979).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
PROTECTION OF PROPERTY
EQUAL PROTECTION
CLASSIFICATION
JUDICIAL RELIEF
POLICE POWER
ZONING
TAXATION
DECISIONS UNDER PRIOR LAW

APPENDIX "K"

GEORGIA CONSTITUTION

Validity of agreement, by stipulation or waiver in state civil case, to accept verdict by number or proportion of jurors less than that constitutionally permitted, 15 ALR4th 213.

Paragraph XII. Right to the courts.

No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state.

1976 Constitution.—Art. 1, Sec. 1, Para. IX.

Cross references.—Indigent's access to courts, §§ 9-2-63 and 17-12-31. Rights of citizens generally, § 1-2-6. Court review of garnishment proceedings, § 18-4-45. Court review of administrative decisions, § 50-13-19.

Law reviews—For article surveying Georgia cases in the area of criminal law from June, 1979 through May, 1980, see 32 Mercer L. Rev. 35 (1980).

For article surveying developments in Georgia criminal law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 95 (1981).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
SELF-REPRESENTATION
RIGHT OF ACCESS
RIGHT TO BE PRESENT

General Consideration

This paragraph does not guarantee to citizen of this state any particular form or method of state procedure.

Its requirements are satisfied if he has reasonable notice and opportunity to be heard, and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by Zorn v. Walker, 206 Ga. 181, 56 S.E.2d 511 (1949); State v. Sanks, 225 Ga. 88, 166 S.E.2d 19 (1969), appeal dismissed, 401 U.S. 144, 91 S.Ct. 593, 27 L.Ed.2d 741 (1971).

The constitutional provision set forth in this paragraph is plainly subject to the inherent power of the court to prescribe the manner in which the business of the court shall be conducted and to preserve the order and decorum of the trial to the furtherance of justice; this discretion of the trial court in assuming the general superintendent and control of the litigation before it is a point of extreme delicacy with which the Court of Appeals is reluctant to interfere, and interference will not be had unless there appears in the case something to demand imperatively the corrective interposition of the Court of Appeals. Davis v. Barnes, 158 Ga. App. 89, 279 S.E.2d 330 (1981).

No requirement that prosecutor make evidence, etc., available before trial.—There is no statute or rule of procedure of force in this state which requires a solicitor general (now district attorney) or other prosecuting officer to make his evidence, documentary or otherwise, available to the accused or his counsel before trial. Blevins v. State, 220 Ga. 720, 141 S.E.2d 426 (1965).

Argument of counsel to jury is a stage of trial. Pierce v. State, 47 Ga. App. 830, 171 S.E. 731 (1933).

APPENDIX "L"

APPEALS TO APPELLATE COURTS GENERALLY

5-6-31 *5-6-33*

The 1983 amendment, effective July 1, 1983, revised the constitutional citations in this Code section to conform to the 1983 Constitution.

JUDICIAL DECISIONS

Appeals where first-impression issue decided on merits.—Because important first-impression issue was raised under recently enacted and previously unconstrued public revenue statute, and because the trial court dealt with that issue on the merits, appellate court chose to pretermit procedural issue and decide appeal on merits. In re Board of Twiggs County Comm'rs, 249 Ga. 642, 292 S.E.2d 673 (1982).

Delay in filing amendment to notice of appeal.—Although it has been over two months later, after the expiration of the statutory appeal period, that appellant filed an amendment to his original notice of appeal to correct the error he made, in light of this section and § 5-6-48, appellant is entitled to amend his notice of appeal to correct the name of the court to which the appeal is directed. Griffin v. Johnson, 157 Ga. App. 657, 278 S.E.2d 422 (1981).

Dismissal proper where procedure not complied with.—Where appellant has failed to comply with the interlocutory review procedure, her appeal must be dismissed. Bautz v. Best, 166 Ga. App. 268, 304 S.E.2d 439 (1983).

Dismissal of appeal not warranted. See Estate of Thurman v. Dodaro, 169 Ga. App. 531, 313 S.E.2d 722 (1984).

Cited in Cochran v. Levitz Furn. Co., 249 Ga. 504, 291 S.E.2d 535 (1982); Steele v. Cincinnati Ins. Co., 252 Ga. 58, 311 S.E.2d 470 (1984); Dugger v. Danello, 175 Ga. App. 618, 334 S.E.2d 3 (1985).

5-6-31. Entry of judgment defined.

JUDICIAL DECISIONS

Filing judgment signed, etc.

Entry means filing judgment signed by judge in office of clerk of court. Joiner v. Perkerson, 160 Ga. App. 343, 287 S.E.2d 327 (1981).

The date on a copy of a judgment bearing a certification by a deputy clerk to the the effect that the copy is a true and correct reproduction of the original on file with the court, serves as the starting date of the appeal period if no evidence is presented as to the actual date of the filing of judgment. Swinney v. City of Atlanta, 176 Ga. App. 823, 338 S.E.2d 52 (1985).

Cited in Murff v. State, 165 Ga. App. 808, 302 S.E.2d 697 (1983); Davis v. Langham, 170 Ga. App. 346, 317 S.E. 2d 903 (1984).

5-6-33. Right of appeal generally.

(a)(1) Either party in an civil case and the defendant in any criminal proceeding in the superior, state, or city courts, may appeal from any sentence, judgment, decision, or decree of the court, or of the judge thereof in any matter heard at chambers.

(2) Either party in any civil case in the probate courts provided for by Article 6 of Chapter 9 of Title 15 may appeal from any judgment, decision, or decree of the court, or of the judge thereof in any matter heard at chambers.

(b) This Code section shall not affect Chapter 7 of this title. (Orig. Code 1863, § 4160; Code 1868, § 4192; Code 1873, § 4251; Ga. L. 1880-81, p. 123, § 1; Code 1882, § 4251; Ga. L. 1887, p. 41, § 1; Civil Code 1895, § 5527; Penal Code 1895, § 1070; Civil Code 1910, § 6139; Penal Code 1910, § 1097; Code 1933, § 6-901; Ga. L. 1965, p. 18, § 22; Ga. L. 1986, p. 982, § 5.)

The 1986 amendment, effective July 1, 1986, in subsection (a), designated the existing language as paragraph (1) and added paragraph (2).

Editor's notes.—Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

RESEARCH REFERENCES

ALR.—Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance—modern status, 11 ALR4th 399.

5-6-34. Judgments and rulings deemed directly appealable; procedure for review of judgments, etc., not subject to direct appeal; scope of review.

(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

(1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;

(2) All judgments involving applications for discharge in bail trover and contempt cases;

(3) All judgments or orders directing that an accounting be had;

(4) All judgments or orders granting of refusing applications for receivers or for interlocutory or final injunctions;

(5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;

(6) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;

(7) All judgments or orders refusing applications for dissolution of corporations created by the superior courts; and

(8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will.

APPENDIX "M"

IX. ORAL ARGUMENT

Rule 49 Oral argument will be scheduled by the court as follows:

(1) Appeals involving death penalties will be placed on the calendar automatically (see Rule 54);

(2) All granted writs of certiorari will be placed on the calendar automatically unless disposed of summarily by the court;

(3) Habeas corpus cases (not involving the death penalties) will *not* be placed on the calendar except upon motion within 20 days of docketing and at the direction of the court;

(4) Other cases will be placed on the calendar upon the request of either party within 20 days from the date the case is docketed in this court.

The request shall be filed as a separate document, shall be directed to the Clerk, and shall certify that the opposite party or his attorney has been notified of the intention to argue the case orally and that inquiry has been made of his opponent whether he intends also to argue orally. The request shall certify further than his opponent stated that he does or does not desire to argue orally. The request shall show service thereof on such opponent. Requests for additional time for argument must be made in writing directed to the Clerk prior to preparation of the oral argument calendar. Arguments will not be permitted to parties or attorneys whose brief has not been timely filed.

Rule 50. Oral argument is limited to 20 minutes for each side except direct appeals of death penalties which are limited to 30 minutes for each side. Appeals, cross appeals, and companion cases shall be considered to be one case for purpose of oral argument.

Rule 51. Appellant opens the argument. Appellee or cross appellant) replies. Rebuttal is limited to one attorney, representing appellant.

Rule 52. Attorneys appearing for oral argument should notify the Clerk of their presence upon arrival at the courtroom.

Rule 53. Argument is waived unless attorneys are ready to argue in proper sequence.

Rule 54. Oral argument by counsel in appeals where a death penalty was imposed is mandatory. Otherwise, unless expressly ordered by the court, oral argument is never mandatory and argument may be submitted by briefs only.

Rule 55. (Reserved)

X. *OPINIONS AND JUDGMENTS*

Rule 56. Each judgment shall show on its face the votes, nonparticipation, or disqualification of each Justice.

Rule 57. A disqualified Justice shall be replaced by a Judge whenever deemed necessary or upon reasonable request by any party.

Rule 58. Justices concurring agree with the opinion and judgment. Justices concurring specially or in the judgment only do not

* * *

APPENDIX "N"

STATE v. ROBERT R. COOK, 083-1024 Vol. 5

* * *

(p. 79) In that respect the Official Code of Georgia Section 29-8-1 (a) and (b) is as follows:

The judges of the probate courts are made the legal depositories for, and custodians of all monies, provided the amount due from all sources shall not exceed $2,500.00, of any heir of any estate who cannot be located by the executor or administrator so that the monies may be distributed to the heir.

The Official Georgia Code Annotated Section 53-6-95, as to Counts 12 and 13 are likewise as follows:

If, from any cause, an estate is unrepresented and not likely to be represented, the judge of the probate court shall vest the administration thereof in the county administrator, and a citation being first published for four weeks.

I further charge you, ladies and gentlemen, that regardless of whether or not the defendant has any other defense, and you have heard his testimony and the defense offered, and regardless of whether or not there is any other evidence in the record upon which a reasonable doubt as to his guilt could be based, proof of good character may of itself constitute such a defense in his behalf, and you, the jury, overriding any amount of positive evidence pointing to the guilt of the defendant may. If you see fit, acquit the (p. 80) defendant upon the reasonable doubt and proof of good character generated in your minds.

Ladies and gentlemen, when you go to the jury room the first thing that you will do is to elect your foreperson to speak for you. What I ask you to do is to write his or her name down on a piece of paper and knock on your jury room door and hand it to the bailiff outside. Deputy Sheriff George Freberg, will be outside. Give the piece of paper to him. He'll bring it to me so that I'll know who your foreperson is.

Your foreperson is elected as is in all elections in a democratic society. He or she who receives the majority vote is your foreperson.

You will not begin discussing the case until, of course, we send out the records in the case and we send out the verdict form and we send out the evidence.

I have prepared for you an original jury verdict form, and this is it with the word "Original" written on it. I also have a copy for each one, and I'll go over and explain the verdict form to each juror.

Would you hand those out to each juror, George?

As you can see, it's in the State of Georgia, County of Chatham, The State of Georgia versus Robert R. Cook, Defendant, the Indictment Number is 083-1024; Jury Verdict: As to Count 1: "We, the jury, find the defendant *blank* of

* * *